LAWRENCE M. WERT

IBLA 82-1336 Decided August 22, 1983

Appeal from decision of Colorado State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer in part and requiring execution of no-surface-occupancy stipulation. C-35043.

Affirmed in part; set aside and remanded in part.

1. Federal Land Policy and Management Act of 1976: Leases--Oil and Gas Leases: Discretion to Lease

   The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas upon a determination, supported by facts of record, that leasing would not be in the public interest because it is incompatible with the character of the land which is being considered for designation as an "outstanding natural area," under 43 CFR 2071.1(b)(1), or an area of critical environmental concern, under section 103(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1702(a) (1976).

2. Federal Land Policy and Management Act of 1976: Wilderness--Oil and Gas Leases: Applications: Generally

   Consistent with Secretarial policy directives, where an oil and gas lease offer embraces lands in a wilderness study area BLM may not issue a lease, and action on such an offer must be suspended until congressional action on the President's recommendations as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

APPEARANCES: C. M. Peterson, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Lawrence M. Wert has appealed from that portion of a decision of the Colorado State Office, Bureau of Land Management (BLM), dated September 7, 1982, rejecting in part his noncompetitive oil and gas lease offer, C-35043.

On January 27, 1982, appellant filed a noncompetitive oil and gas lease offer for 3,985.50 acres of land situated in Mesa and Montrose Counties, Colorado, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976). In its September 1982 decision, BLM rejected appellant's lease offer to the extent that it included land within the Sewemup Mesa Wilderness Study Area, which is "being studied in the Resource Management Plan [RMP] for designation as an Outstanding Natural Area [ONA] and/or Area of Critical Environmental Concern [ACEC]." 1/ Appellant did not challenge that portion of the decision which required him within 30 days of receipt of the decision, to execute a special stipulation prior to issuance of an oil and gas lease for the remaining land. 2/ The stipulation provides that: "No occupancy or other activity on the surface of the below described land is allowed under this lease."

With respect to the rejected land, the record includes a copy of the relevant pages from an Umbrella Oil and Gas Leasing Environmental Assessment (EA), dated June 1982, prepared by the Grand Junction District Office, BLM, which states that a portion of the land within the Sewemup Mesa, described as the "Sewemup Mesa Outstanding Natural Area/ACEC RMP Proposal," is subject to a policy of "No Lease." The EA further states at pages 57a-57b:

> Sewemup Mesa is being studied in the RMP process for designation as an Outstanding Natural Area and/or ACEC. Management emphasis is on maintaining the unique natural setting and undisturbed character of this isolated 13,000 acre mesa top. There is presently no vehicle access onto Sewemup Mesa. Steep walls and rugged terrain make it difficult to reach the mesa top, even on

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1/ The rejected land, which has been partially surveyed, is described as follows:

T. 49 N., R. 18 W., New Mexico principal meridian, Colorado
sec. 7: All
sec. 8: N 1/2 SW 1/4, SW 1/4 SW 1/4
sec. 17: W 1/2 W 1/2
sec. 18: All
sec. 19: E 1/2
sec. 20: W 1/2 NW 1/4, SW 1/4, SW 1/4 SE 1/4
T. 49 N., R. 19 W., New Mexico principal meridian, Colorado
sec. 1: All
sec. 12: All
sec. 13: E 1/2

2/ The land which would be subject to the stipulation is described as follows:

T. 49 N., R. 18 W., New Mexico principal meridian, Colorado
sec. 8: W 1/2 NW 1/4, SE 1/4 NW 1/4, NW 1/4 SE 1/4, SE 1/4 SW 1/4
sec. 20: SE 1/4 NW 1/4

> foot. Vertical relief from the base of the mesa exceeds 1,000', with most of the mesa edge formed by sheer sandstone cliffs. The extremely isolated nature of Sewemup Mesa has allowed the native plant and animal community to function relatively unaffected by the influences of man, including the influences of livestock grazing. The higher elevations are dominated by a forest of ponderosa pine which grade into pinion and juniper forests on the lower elevations.
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> The 13,000 acre Sewemup Mesa lies within the 19,140 acre Sewemup Mesa WSA (CO-070-176) and is the ecologically primitive heart of the area. The remarkably scenic sandstone cliffs and boulder strewn slopes which ring the outer edge of Sewemup Mesa rival nearby National Parks for grandiose scenic display. The Whitewater MFP policy regarding Sewemup Mesa included the following criteria:
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> 1. No Mineral Leasing
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> 2. No rights of way
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> 3. No new roads
>
> 4. Use of other land use restrictions as deemed necessary to preserve wild land values.

With respect to the land subject to the no-surface-occupancy stipulation, the EA states that another portion of the land within the Sewemup Mesa described as the "Sewemup Mesa Buffer Zone," is subject to a policy of "No Surface Occupancy." The EA further states at 57a:

> See discussion for stipulation #40 for Sewemup Mesa. Outstanding Natural Area/ACEC RMP proposal. The Whitewater MFP management policy for Sewemup Mesa specified a 1/4 mile wide no surface occupancy buffer zone around the mesa. This would allow directional drilling underneath the mesa from the edges of the mesa. Based on exploration in the region it is assumed that any oil or gas deposits underneath Sewemup would be deep, probably 13,000 or more feet below the surface.

In his statement of reasons for appeal, appellant contends that there is no basis for mandatory rejection of noncompetitive oil and gas offer C-35043 and that inclusion of the land in a wilderness study area (WSA), under section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976), an outstanding natural area under 43 CFR 2071.1(b)(1), or an area of critical environmental concern under section 103(a) of FLPMA, 43 U.S.C. § 1702(a) (1976), does not mandate rejection of an oil and gas lease offer. Appellant also argues that, although BLM has discretionary authority to reject an oil and gas lease offer, it has not adequately established that rejection is required in the public interest,

weighing the potential benefits of oil and gas development, and has not considered whether special wilderness values might be adequately protected under special stipulations, including no-surface occupancy. Appellant also states that the decision to reject certain lands was "arbitrary." Appellant notes, for example, that he is unable to discern in the record the distinction drawn between certain areas in secs. 8 and 20, T. 49 N., R. 18 W., New Mexico principal meridian, Colorado, which were rejected for leasing, and those available for leasing subject to the no-surface-occupancy stipulation, where the areas were all within the proposed Sewemup Mesa ONA/ACEC. Appellant concludes that BLM should either issue an oil and gas lease with appropriate protective stipulations or suspend the oil and gas lease offer pending completion of the wilderness study and study of the area for possible designation as an ONA and/or ACEC.

[1] It is well established that the Secretary of the Interior has the discretion to refuse to issue an oil and gas lease. Udall v. Tallman, 380 U.S. 1, rehearing denied, 380 U.S. 989 (1963). A BLM decision rejecting an oil and gas lease offer will be affirmed where it is supported by facts of record that leasing would not be in the public interest, and an appellant does not establish compelling reasons for modification or reversal. Ida Lee Anderson, 70 IBLA 259 (1983); Esdras K. Hartley, 23 IBLA 102 (1975).

The primary aim of BLM's rejection of part of appellant's oil and gas lease offer is to protect the land's character for potential designation as an "ONA" or an "ACEC." To the extent that any authorized activity would impair the suitability of an area for such designation, the protection afforded by a policy of no leasing is clearly in the public interest. Ted C. Findeiss, 69 IBLA 34 (1982); Pinnacle Mining and Exploration Co., 28 IBLA 249 (1976). Appellant is correct, however, that designation of the Sewemup Mesa as either an ONA or an ACEC would not itself preclude oil and gas leasing. An "ONA" is defined as "an area of unusual natural characteristics where management of recreation activities is necessary to preserve those characteristics." 43 CFR 8352.0-5(a). The applicable regulation, 43 CFR 8352.1, provides that "[f]acilities may be used, occupied, constructed, or maintained * * * only as permitted by law, other Federal regulations, or authorized under this Subpart 8352" and not "in a manner that unnecessarily detracts from the quality of the outstanding natural features of the area." "Areas of critical environmental concern" are defined as "areas * * * where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C. § 1702(a) (1976). The Secretary is directed to "give priority to the designation and protection" of such areas in the development and revision of land use plans. 43 U.S.C. § 1712(c)(3) (1976). The applicable regulation, 43 CFR 1601.0-5(b) provides that: "The identification of a potential ACEC shall not, of itself, change or prevent change of the management or use of public lands." While the applicable law does not preclude oil and gas leasing, it does recognize that outstanding natural areas and areas of critical environmental concern are entitled to special protection. Rejection of appellant's oil and gas lease offer would not be inconsistent with that objective. Eagle Exploration Co., 69 IBLA 96 (1982).

Appellant argues that BLM has not established that rejection is required in the public interest. We disagree. It is evident that BLM has decided to maintain the "undisturbed character" of the Sewemup Mesa. We cannot say that such an objective is not in the public interest. Ted C. Findeiss, supra. Moreover, it follows from this that any activity, including oil and gas leasing, would be totally incompatible with that objective.

Appellant also argues that BLM did not adequately weigh the potential benefits of oil and gas development. We disagree. Appellant ignores the fact that oil and gas leasing within the Grand Junction Resource Area was adopted as the preferred alternative under the EA prepared by the Grand Junction District Office and approved by the State Office. The record indicates that BLM did weigh the potential benefits of oil and gas development.

Appellant also argues that BLM did not give adequate consideration to the protection of the public interest in other resource values through the imposition of special stipulations, including no surface occupancy. We have long held that where leasing has been refused, the record should reflect that BLM has considered whether leasing subject to reasonable stipulations would be sufficient to protect the public interest. Mary A. Pettigrew, 64 IBLA 336 (1982), and cases cited therein. The record belies appellant's assertion. As outlined in the EA at page 4, oil and gas leasing was considered subject to open-ended stipulations (Appendix 3) and site-specific stipulations, including no-surface occupancy (Appendix 2). In the "Decision Record/Rationale," dated May 25, 1982, the BLM State Office generally approved the leasing oil and gas reserves subject to such stipulations. In addition, the State Office provided that "individual lease offers should be analyzed and conditioned, on a case-by-case basis, by appropriate supplemental stipulations tailored to avoid specific environmental hazards identified in this report and not sufficiently covered by the open-ended stipulations and other stipulations recommended above" (Decision Record/Rationale at 1).

Accordingly, we conclude that appellant has not presented compelling reasons to modify or reverse the BLM decision rejecting in part his oil and gas lease offer, and that decision will be affirmed.

By decision dated November 14, 1980, BLM designated 19,140 acres in inventory unit CO-030-310A/CO-070-176 (Sewemup Mesa) as a WSA, pursuant to section 603(a) of FLPMA, supra. 45 FR 75584 (Nov. 14, 1980). The WSA is situated in the Montrose and Grand Junction Districts and includes the lands described in the lease offer which are subject to the no-surface-occupancy stipulation. The study mandated by section 603(a) has not been completed.

[2] On December 30, 1982, the Secretary of the Interior announced that the Department would issue no leases in WSA's. Pursuant thereto, the Director, BLM, has issued Instruction Memorandum No. 83-237 (Jan. 7, 1983). In relevant part, this memorandum provides that "leases currently in process should not be issued. * * * All such applications are to be maintained as pending until further notice." Accordingly, the State Office is directed to suspend further action on that portion of appellant's oil and gas lease offer subject to leasing with no-surface-occupancy stipulations and to hold it

pending with priority as of the date of filing "until Congressional action is taken on the President's recommendation." Id. at 2. 3/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, and set aside and remanded in part for action consistent with this decision.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge

3/ As we read the Instruction Memorandum and the Secretarial Directive, where the sole reason for rejection of an oil and gas lease would be the fact that the land is included in a WSA, suspension of consideration, in order to preserve priorities pending resolution of the land's ultimate status as wilderness is appropriate. Where, however, rejection of a lease offer would occur independent of ultimate wilderness designation, BLM may reject on that basis. Thus, where the land is already under lease, or the minerals are not owned by the United States, the mere fact that the land is within a WSA does not preclude rejection of the offer. So, too, in the instant case, the values identified by BLM, regardless of the ultimate resolution of the WSA analysis, justify immediate rejection of the offer.